

PT 99-31

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

DECATUR MARANATHA ASSEMBLY)	
OF GOD)	A. H. Docket # 98-PT-0017
Applicant)	
)	Docket # 97-58-64
v.)	
)	Parcel Index # 04-12-27-129-004
THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Hugh H. Rowden, Jr., attorney at law, appeared on behalf of Decatur Maranatha Assembly of God. Mr. Kenneth G. Boles, assistant state's attorney of Macon County, appeared on behalf of the Macon County Board of Review.

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on June 22, 1998, to determine whether or not Macon County Parcel Index No. 04-12-27-129-004 qualified for exemption from real estate taxation for all or part of the 1997 assessment year.

Rev. Douglas Lowry, pastor of Decatur Maranatha Assembly of God (hereinafter referred to as the "Church") was present and testified on behalf of the church.

The issues in this matter include, first, whether the church is a religious organization; secondly, whether the church owned this parcel during the 1997 assessment year; and lastly, whether the church was using this parcel for religious purposes during the 1997 assessment year.

Following the submission of all of the evidence and a review of the record, it is determined that the church is a religious organization. It is also determined that the church owned this parcel during the 1997 assessment year. Finally it is determined that this parcel was not being used for religious purposes during the 1997 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) in this matter, namely that this parcel did not qualify for exemption for the 1997 assessment year, was established by the admission in evidence of Department’s Exhibit Nos. 1 through 6A.

2. On July 15, 1997, the Macon County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the parcel here in issue for the 1997 assessment year. (Dept. Ex. No. 2)

3. On January 29, 1998, the Department advised the church that it was denying the exemption of this parcel because this parcel was not in exempt use. (Dept. Ex. No. 3)

4. By a letter dated February 16, 1998, the attorney for the church requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter, conducted on June 22, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. On December 11, 1996, the Redwood Development Company, Inc. conveyed the parcel here in issue to “Maranatha Assembly Of God, A Religious Corporation”. (Dept. Ex. No. 2D)

7. On March 6, 1997, the Redwood Development Company, Inc. delivered a corrective deed to the church showing “Decatur Maranatha Assembly Of God, An Illinois Not For Profit Corporation” as grantee. (Dept. Ex. 2E)

8. The church was incorporated pursuant to the General Not For Profit Corporation Act of Illinois on March 22, 1983, for purposes which include the following:

The purposes for which the corporation is organized are: to present, encourage and further evangelistic Christian ministries. Said corporation is organized exclusively for charitable, religious and educational purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 509(c) (3)¹ of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law). (Appl. Ex. No. 3)

9. The church belongs to the Illinois District Council of the Assemblies of God which is headquartered in Carlinville, Illinois. (Tr. p. 12)

10. During 1997, the church had approximately 700 voting members. The average attendance at Sunday morning worship was approximately 1,100. During 1997, the church had an average of about 700 persons each week in its Sunday school program. (Tr. pp. 10 & 11)

11. During 1997, there was Sunday school at the church at 9:00 AM on Sunday morning followed by the Sunday morning worship service at 10:00 AM. Sunday evening services were held at 6:00 PM and mid-week services were held on Wednesday evenings at 7:00 PM. (Tr. pp. 47 & 48)

12. I take Administrative Notice of the Department's determination in Docket No. 84-58-137, in which the Department determined that the church property, consisting of 24.2 acres, qualified for exemption. During 1997, this 24.2 acres contained the church buildings. (Appl. Ex. No. 6)

13. The buildings of the church include a sanctuary building and a gymnasium/fellowship hall, both of which include offices and classrooms. In addition there is a paved, lighted parking lot for four hundred cars on this property. (Tr. pp. 14 & 15)

14. The parcel here in issue, Macon County Parcel Index No. 04-12-27-129-004, is located across Imboden Drive and approximately 500 feet West of the property where the church's buildings and parking lot are located. The parcel in issue is located at the Northeast

¹ Section 509 of the Internal Revenue Code defines private foundations. Section 501 of the Internal Revenue Code is the section which provides a list of exempt organizations.

corner of U.S. 51 and Imboden Drive and contains approximately three-quarters of an acre. (Tr. p. 32)

15. U.S. 51 is a main arterial four-lane highway that runs North and South through Decatur. In fact, it continues to be four-lane as far South as the City of Macon. Macon is approximately ten to twelve miles South of the U.S. 51 intersection with Imboden Drive. (Tr. p. 21)

16. The speed limit on U.S. 51, in the vicinity of Imboden Drive, is 45 miles per hour. (Tr. p. 52)

17. The buildings of the church are located back from Imboden Drive behind a row of trees and also behind neighboring commercial buildings. Consequently, the buildings of the church as well as a large sign located on the 24.2-acre parcel where the buildings are located are not visible to persons traveling on U.S. 51. (Tr. p. 57)

18. After acquiring the 24.2-acre parcel, the church began to construct its first building on the 24.2-acre parcel. That building was the gymnasium and the church moved into it on Labor Day in 1984. (Tr. pp. 9 & 44)

19. As soon as the gymnasium was completed and in use, the primary complaint of people looking for the church was that when they were driving down U.S. 51 they couldn't see the church and missed the Imboden Drive turnoff. (Tr. p. 23)

20. Rev. Lowery, recognizing the problem, talked to the manager of the Redwood Smorgasbord, which then owned the parcel here in issue, about leasing an area where the church could put up a sign. The Redwood Smorgasbord was a restaurant. The Redwood Smorgasbord at no cost allowed the church to place a four-foot by eight foot professionally painted sign on the parcel here in issue. That sign said "Maranatha Assembly of God one block East". The sign also had an arrow on it. Since this sign was on the property of others, it was not lighted. (Tr. p. 24)

21. That same exact sign, which was not lighted, was still on the parcel here in issue on the date of the hearing in this matter. The hearing in this matter was held more than one year after the church had acquired the parcel. (Tr. p. 48)

22. When the Redwood Smorgasbord was closed and the property put up for sale, the members of the church became concerned that they would not be able to use the parcel where the sign was located, since that parcel was also for sale. (Tr. p. 25)

23. The church, following its prescribed procedure, approved the purchase of the three quarters of an acre parcel here in issue for \$60,000.00 at a Special Church Council held on September 11, 1996. (Tr. pp. 25-27, Appl. Ex. No. 8)

24. The affidavit of use of Pastor Lowery, dated March 19, 1997, states that the church as owner hopes to erect a church sign on this parcel and possibly to use the property for future expansion of the church facility. (Dept. Ex. No. 2F)

25. At the time that the church purchased the parcel here in issue, this parcel was being considered for a youth center or counseling center by the church. However, it was determined that this three-quarters of an acre parcel was not configured in such a way as to allow for sufficient parking, as required by the city code. (Tr. pp. 38 & 39)

26. The sign which was on this parcel, throughout 1997, was rather small, four feet by eight feet, and not lighted. Rev. Lowery has acknowledged that this sign is ineffective during the day and totally useless at night. (Tr. pp. 24 & 42)

27. The parcel here in issue was acquired by the church on or before January 1, 1997. On June 22, 1998, the date of the hearing in this matter, this parcel was still improved with the same four foot by eight foot unlighted sign, which had been on the property since the spring of 1985. (Tr. pp. 42 & 48)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural

societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992).

Concerning property used for religious purposes, 35 ILCS 200/15-40 exempts certain property from taxation, in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, . . . not leased or otherwise used with a view to profit, is exempt,

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore very clear that the burden of proof is on the church to establish that it is entitled to an exemption.

Based on the foregoing I conclude that the church owned the parcel here in issue during the entire 1997 assessment year. Based on the Department's decision in Docket No. 84-58-137 concerning which I previously took Administrative Notice, I conclude that the Department has determined that the church is a religious organization.

A religious purpose, pursuant to the constitution concerning exemption from taxation, is a use of property by a religious society or organization as a place for worship, Sunday schools, and religious instruction. People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132 (1911). To qualify for exemption, a property must in fact be used for religious purposes. An exemption will be denied if it is not so used. Thus, for example, a church property that is boarded up and vacant will not qualify for exemption. Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983). During the 1997 assessment year the parcel here in issue was vacant except for the church's four by eight foot, unlighted directional sign which does not meet the foregoing definition of a religious purpose. In the case of People ex rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt.

I therefore conclude that the parcel here in issue was not used for primarily religious purposes during the 1997 assessment year.

I therefore recommend that Macon County Parcel Index No. 04-12-27-129-004 remain on the tax rolls for the 1997 assessment year, and be assessed to the church, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
March 10, 1999